IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 5364 of 2007()

AGAINST THE ORDER IN LP 14/2007 IN
SC.135/2001 of ADDL.DISTRICT COURT (ADHOC)-II, MANJERI
[CRIME NO.46/2000 OF KOTTAKKAD POLICE STATION]

.....

APPLICANT/ACCUSED:

HARSHAD, S/O. AHAMMED KUTTY,
VADAKKAN HOUSE, KOTTAKAD AMSOM & DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5364 of 2007

Dated this the 6th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution iner alia under Sections 498A and 306 I.P.C. He is the husband of the deceased. Investigation was complete. Final report was filed. Cognizance was taken. The case was committed to the court of Session. The petitioner had entered appearance and was enlarged on bail. The trial had commenced. The matter had reached the stage of 313 examination. At that stage, the petitioner started not appearing before the learned Sessions Judge. Consequently, the case now stands transferred to the list of long pending cases. The learned Sessions Judge has issued coercive processes against the petitioner and the petitioner finds a warrant of arrest issued by the learned Sessions Judge chasing him.

2. According to the petitioner, he is absolutely innocent. His absence was not wilful or deliberate. He was forced and compelled to leave in connection with his employment. The petitioner is willing to appear before the learned Sessions Judge

and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Sessions Judge on merits, in accordance with law and expeditiously. He, therefore, prays that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the petitioner may be directed to appear before the court below and seek regular bail.

4. I have considered all the relevant inputs. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the

circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007